



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/517,490 | 12/10/2004 | Iwao Yamazaki | 04173.0461-00000 | 5583 |

22852 7590 01/22/2007
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER
LLP
901 NEW YORK AVENUE, NW
WASHINGTON, DC 20001-4413

| |
|----------|
| EXAMINER |
|----------|

ROGERS, KRISTIN D

| | |
|----------|--------------|
| ART UNIT | PAPER NUMBER |
|----------|--------------|

3736

| SHORTENED STATUTORY PERIOD OF RESPONSE | MAIL DATE | DELIVERY MODE |
|--|------------|---------------|
| 3 MONTHS | 01/22/2007 | PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

| | | | |
|------------------------------|--------------------------------------|--|--|
| Office Action Summary | Application No. 10/517,490 | Applicant(s) YAMAZAKI ET AL. | |
| | Examiner Kristin D. Rogers | Art Unit 3736 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 December 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5 and 6 is/are pending in the application.
- 4a) Of the above claim(s) 4 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5 and 6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

Response to Arguments

2. Applicant's arguments with respect to claims 1-3 and 5-6 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein

Art Unit: 3736

were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cha (5720296) in view of Masahiko (Japanese Publication No. 11-113870). Cha shows a method and apparatus for analyzing body composition based on bioimpedance.

7. In regard to claim 1, Cha shows display equipment for displaying the characteristics of a body including the quantities of the bone, the water and/or the muscle of the body, the display comprising: a plurality of electrodes (E1-E8) in contact to the surface of the body; means for measuring the impedance (11) of the body by feeding a measuring current through said plurality of the electrodes into the body; means for putting the personal information (15, 18) such as male or female, age, height, and body weight to be measured into the display equipment; means for calculating each approximate value of water weight of the body (total body water TBW) on the basis of the impedance as measured and said personal information (microprocessor 14 and 10); means for judging the somatotypes of the body which are classified on the basis of the correlations between the approximate value as calculated and the body weight; and a display (16, 17) for indicating the somatotype as judged by said judging means (column 5, lines 8-15). Cha lacks disclosure of a belt including a plurality of electrodes for measuring impedance. Masahiko teaches a method and apparatus for measuring the

Art Unit: 3736

impedance of the body comprising a belt (112) in which a plurality of measurement electrodes are housed (101a-101h) for determining the body fat composition of the user. Therefore it would have been obvious to modify Cha with a display means comprising a belt having a plurality of electrodes as taught by Masahiko since such modification would provide a sensing means to measure impedance of the body in addition to determining the fitness and body composition of the user.

8. In regard to claim 2, Cha shows he display equipment for displaying the characteristics as set forth in claim 1, wherein said personal information include at least male or female and the age, and the combination thereof (column 3, lines 42-43).

9. In regard to claim 3, Cha shows the display equipment for displaying the characteristics as set forth in claim 1 or 2, wherein said display equipment includes a memory (microprocessor 14) of recording the bone weight, the water weight and/or the muscular weight of the body, which have been calculated on the basis of the impedance as measured, and said personal information, and further, a display of indicating sequentially the data as calculated.

10. Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cha and Masahiko as applied to claims 1-3 above, and further in view of Browner. Cha and Masahiko show a device for measuring body impedance and determining body type of a user including a plurality of electrodes (E1-E8). Cha and Masahiko lack teaching applying a pulsed current through the electrodes for treatment of the body. Browner teaches an electrical body treating device comprising an electrode belt including current stimulating electrodes 11 and 12 for delivering a therapeutic electrical currents to the

Art Unit: 3736

body tissue to tone the muscles of the body. The electrode belt may be placed on various muscle groups including stomach, thighs, and back. Therefore it would have been obvious to one having ordinary skill in the art at the time of the invention to modify Cha in view of Masahiko with electrodes that delivered a pulsed current as taught by Browner since such modification would provide treatment and toning to the muscle groups.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kristin D. Rogers whose telephone number is 571.272.7293. The examiner can normally be reached on Monday through Friday 8:00am - 4:30pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on 571.272.4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3736

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

KDR

KDR

McHenry
[Faint, illegible text]